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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3719 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JUMA ODIYAN

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 11/02/2000

ORAL JUDGEMENT :

The respondent is served, but nobody appears on
his behalf.

2. The Special Civil Application is filed by the
petitioner, Gujarat State Road Transport Corporation
("the Corporation" for brevity) against the award passed
by the Labour Court, Rajkot in LCR No.545 of 1984 dated

9.7.1987. By the said award, the Labour Court has set aside the order of dismissal of the respondent and directed his reinstatement with 40 % back wages.

3. The respondent while serving as Conductor on 18.11.1982, alleged to have committed the default by not issuing tickets to a group of passengers, 5 + 2 (five adults, two children), though the passengers called upon him thrice to issue tickets and were ready to make payment of the fare. It is alleged that the respondent insisted that he would issue tickets subsequently and collect the fare also subsequently. At Paddhar Bus Stand, when the bus came to be checked, the respondent issued tickets of Rs.2.50 paise after punching them in a wrong manner at Stage No.1. A departmental inquiry was held against the respondent and he was found to have committed the misconduct. An order dismissing the respondent with effect from February 2, 1983 came to be passed and ultimately Reference (LCR) No.545 of 1984 came to be made to the Labour Court, Rajkot Rajkot, wherein the impugned award came to be passed against which the present Special Civil Application is filed by the Corporation.

4. Mr.Hardik Raval, learned counsel appearing for the Corporation has invited attention of this Court to the impugned award. The Labour Court, while discussing the rival contentions of the parties has come to the conclusion that, "it is proved that the respondent did not issue tickets". The Labour Court has also recorded that in reply to the show cause notice issued to the respondent, the only case which was put forward was that, "the respondent is very poor, that he is a man of family, and that his bread may not be snatched"; which defence does not help in giving any further finding. The Labour Court has then discussed that it feels necessary to interfere with the order of dismissal passed by the Corporation under the provisions of sec.11A. It is surprising that the Labour Court having recorded that the past service record of the respondent, is not good and not only that but on as many as 17 times the respondent was given opportunity to improve upon, has passed the aforesaid award, reinstating the respondent with continuity of service and has also awarded 40 % of the back wages to him.

5. On perusal of the material on record and the default card of the respondent produced at Annexure 'B', it can be said without hesitation that interference by the Labour Court with the order of dismissal of the respondent was not fully justified. On going through his

default card, it is also noticed that in the year 1976 also the respondent was dismissed from service, but the authorities thought it fit to give an opportunity to the respondent to improve. He was, therefore, reinstated in service and penalty of stoppage of annual increments for a period of 3 years, with permanent effect, was imposed upon him. In fact that should have been a turning point in the life of the respondent. It is pertinent to note that though the said penalty was at serial no.7 of the default card, thereafter, the respondent has committed as many as 10 further defaults and the present default is at serial no.18. Not only that, even thereafter he has committed a further default. Looking to the pattern of behaviour of the respondent, the award passed by the Labour Court, reinstating the respondent with 40 % back wages is not only unwarranted but also going to send wrong message in the society. The award of the Labour Court is, therefore, required to be modified. On the facts and in the circumstances of the present case, since the petitioner is reinstated in service since 1991 and since nothing has been brought on record to show that the respondent has repeated such a misconduct after his reinstatement and also with a view to see that the family of the respondent is not subjected to the penalty of economic death at this stage after a decade, though a strict view of the matter is required to be taken in such cases, the ends of justice would be met if the award of the Labour Court is modified by upholding the reinstatement with some punishment imposed on the respondent.

6. In the result, this petition is partly allowed. The award of the Labour Court dated 9.7.1987 in Reference (LCR) No.545 of 1984 is modified.

7. The order of reinstatement with continuity of service is upheld. However, a penalty of stoppage of five increments with future effect on the respondent. The order of payment of 40 % back wages is set aside. The respondent shall not be entitled to any back wages as ordered by the Labour Court. Rule is made absolute to the aforesaid extent. No order as to costs.

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